

REMARKS

Reconsideration and allowance or declaration of interference is respectfully requested.

In paragraphs 1 and 2 of the Office Action the Examiner rejected Claims 36-39 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In response, Applicants have amended the claims in accordance with the Examiner's helpful suggestions. Accordingly, Applicants respectfully submit that the present claims fully are supported by the originally filed specification.

In paragraphs 3, 4 and 5 of the Office Action, the Examiner rejected Claims 36-39 under 35 USC 102(e) as being anticipated by Hartley et al. '622, Hartley et al. '440 and Hartley et al. '793, respectively. Applicants respectfully traverse the rejections.

Applicants respectfully submit that the rejection is in error because none of the three references qualify as prior art under 35 USC 102(e). The present application has an effective filing date of at least as early as September 29, 2000, while the earliest effective filing date of the the three Hartley et al. patents is at best January 5, 2001. Applicants note that in the corresponding application of applicants, Serial No. 10/266,975, the Examiner agreed that the Hartley et al. patents were not entitled to an effective filing date before January 5, 2001. A copy of the Office Action dated April 30, 2004 from the '975 application is attached as Exhibit A hereto and the Examiner's attention specifically is directed to page 2, paragraph 1 of said Office Action. Applicants incorporate by reference herein all of the information supplied in the prosecution of the '975 application regarding the priority dates of the Hartley et al. patents.

In paragraphs 6-7 of the Office Action, the Examiner provisionally rejected Claims 36-37 under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claims 38-41 of copending Application No. 10/266,975. In response, Applicants note that this is a provisional rejection and Applicants agree that upon the patenting of the claims in the '975 application, Applicants will file a terminal disclaimer in the present application.

Applicants note that in paragraph 8 of the Office Action, the Examiner considered the remaining references filed with the Information Disclosure Statement but did not see them as teaching and/or fairly suggesting the present invention.

Also, in fulfilling Applicant's duty of disclosure, enclosed as Exhibit B hereto is a copy of a Court decision in the case of *Cargill, Inc. v. Sears Petroleum & Transport Corp. et al.*, Civil Action No. 5:03-CV-0530 (DEP) (N.D.N.Y. August 27, 2004) in which the Court interpreted certain of the claim terms from the Hartley et al. '793 patent and discussed, but did not come to any holding, the priority date of the Hartley et al. '793 patent. Also attached as Exhibit C is a copy of a brief (with accompanying affidavit) filed by the assignee of the Hartley patents in a lawsuit in which the assignee of this application currently is involved, and in which the Hartley assignee makes arguments regarding the priority of the Hartley patents. Applicants also copy of a brief that was filed by the assignee of the Hartley patents in a lawsuit in which the assignee of this application currently is involved, and in which the Hartley assignee makes arguments regarding the priority of the Hartley patents. Applicants submit this document in accordance with their duty of disclosure under 37 CFR 1.56 and MPEP 2001.06(c). submit this document in accordance with their duty of disclosure under 37 CFR 1.56 and MPEP 2001.06(c).

Allowance of the above-identified application and/or declaration of interference with United States Patent No. 6,582,622 are respectfully requested. The Examiner's attention also is directed to applicants' United States Patent Application Serial No. 10/266,975, which copied claims from three other patents in the lineage of the '622 patent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Al B. Clement', with a stylized flourish at the end.

Alan B. Clement

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